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9 JANE DOE, by and through her Guardian Ad Litem,
10 D.H.

11
12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 JANE DOE, by and through her Guardian Ad
17 Litem, D.H.,

18 Plaintiff,

19 vs.

20 MT. DIABLO UNIFIED SCHOOL
21 DISTRICT, a public entity, DANIEL
22 GONZALEZ, an individual, and DOES 1
23 through 10, inclusive,

24 Defendants,
25

CASE NO.:

**COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES**

DEMAND FOR JURY TRIAL

26 COMES NOW, Plaintiff JANE DOE, by and through her Guardian Ad Litem, D.H., by
27 and through their attorneys, Bennett & Johnson, LLP, and submits this Complaint for Damages
28 against each of the Defendants named herein.

PARTIES, JURISDICTION, AND VENUE

1. At all times herein mentioned, Plaintiff, JANE DOE, a mentally disabled person, resided
in the City of Concord, County of Contra Costa, State of California, within boundaries of the
United States District Court for the Northern District of California. At all relevant times, Plaintiff

1 was a student at the Bridge Program at Loma Vista Adult Center, 1266 San Carlos Ave.,
2 Concord, CA, a public school within the jurisdiction of Defendant MT. DIABLO UNIFIED
3 SCHOOL DISTRICT ("MDUSD").

4 2. D.H. is the natural mother and general guardian for plaintiff, JANE DOE, a mentally
5 disabled person.

6 3. Defendant, MDUSD, is, and at all relevant times was, a public entity, school district, and
7 state agency in the state of California. At all relevant times, MDUSD operated, controlled,
8 maintained, and supervised the Bridge Program at Loma Vista Adult Center, 1266 San Carlos
9 Ave., Concord, CA, within its school district.

10 4. Defendant, DANIEL GONZALEZ, is, and at all relevant times was, an individual over
11 the age of 18, residing in the State of California, and was employed by MTUSD as a teacher for
12 mentally disabled students at the Bridge Program at Loma Vista Adult Center.

13 5. At all times herein mentioned, Defendant, DANIEL GONZALEZ, was an agent, servant
14 and employee of the remaining Defendants and was acting within the course and scope of that
15 agency or employment.

16 6. Plaintiff is informed and believes, and thereupon alleges, that Defendants, DOES 1-10,
17 inclusive, are, and at relevant times were, individuals over the age of 18, residing in the State of
18 California, and were adult teachers, aids, therapists, nurses, counselors, and/or administrators at
19 the Bridge Program at Loma Vista Adult Center and/or MDUSD, who owed a duty of care to
20 Plaintiff as a special education student at the Bridge Program at Loma Vista Adult Center, and
21 breached that duty.

22 7. At all times herein mentioned, Defendants DOES 1-10, inclusive, were the agents,
23 servants and employees of the remaining Defendants and were acting within the course and scope
24 of that agency or employment.

25 8. Plaintiff does not know the true names and/or capacities of DOES 1-10, inclusive, and
26 Plaintiff prays leave to amend this Complaint to insert the true names of defendants when their
27 identities are ascertained.

1 9. This Court has federal question jurisdiction under 28 U.S.C. §1331 and under 20 U.S.C.
2 §1681 et seq., and supplemental jurisdiction of the state law claims under 28 U.S.C. §1367.

3 10. Venue of this action lies in this district pursuant to 28 U.S.C. §1391(b), as the Defendants
4 reside in this district and a substantial part of the events or omissions giving rise to this claim
5 occurred in this district.

6 11. All conditions precedent to the filing of this action have been satisfied. Plaintiff presented
7 a claim for damages to MDUSD on February 2, 2018. Defendant MDUSD served notice of the
8 denial of Plaintiff's claim on February 23, 2018. This action is being filed within 6 months of
9 Defendant's denial.

10 **FACTUAL ALLEGATIONS**

11 12. At all relevant times, Plaintiff, JANE DOE, is and was a mentally disabled person within
12 the meaning of California Penal Code §261 et seq. and incapable of giving legal consent for
13 sexual intercourse.

14 13. Plaintiff, JANE DOE, a mentally disabled person, was a student at the Bridge Program at
15 Loma Vista Adult Center during the fall 2017 school year. The Bridge Program assists special
16 needs students to increase independence and access vocational, social and recreational
17 opportunities in the community. At all relevant times herein, JANE DOE lived with her mother
18 and general guardian D.H.

19 14. During the fall of 2017 one of JANE DOE'S special education teachers at the Bridge
20 Program was Defendant DANIEL GONZALEZ. During the fall of the 2017 school year,
21 Defendant DANIEL GONZALEZ sexually assaulted JANE DOE on at least 23 occasions
22 between September 2017 and December 5, 2017, including acts of rape, sex with a foreign
23 object, forced sodomy, and oral sex.

24 15. The sexual assaults occurred both off and on the premises of the Bridge Program at Loma
25 Vista Adult Center and/or MDUSD.

26 16. Prior to and during the time that Defendant DANIEL GONZALEZ was sexually abusing
27 JANE DOE during the 2017 school year, Defendant MDUSD, and DOES 1-10, inclusive, had
28

1 actual notice that Defendant DANIEL GONZALEZ was engaging in prohibited and
2 inappropriate behavior and posed a risk of sexual abuse to students.

3 17. Prior to and during the time that Defendant DANIEL GONZALEZ was sexually abusing
4 JANE DOE, Defendants MDUSD and DOES 1-10, inclusive, had actual notice that Defendant
5 DANIEL GONZALEZ was engaging in misconduct and prohibitive behavior including but not
6 limited to: giving female students unsupervised rides in his private vehicle during school related
7 events as well as to and from school; visiting students at off campus locations including their
8 homes and places of work; providing students with gifts, ice cream, alcohol and drugs; spending
9 unsupervised time involving unauthorized activity with students, including, but not limited to
10 Plaintiff JANE DOE, while at the Bridge Program facility both during and after designated
11 school hours.

12 18. Plaintiff is informed and believes, and thereupon alleges, that Defendants MDUSD and
13 DOES 1-10, inclusive, had actual notice of rumors and innuendo regarding the inappropriate and
14 prohibited behavior of Defendant DANIEL GONZALEZ, including rumors of sexual
15 misconduct, but failed to take any appropriate action to investigate, protect present and future
16 victims, or remedy the situation.

17 19. As a result of the failure of Defendants MDUSD, and DOES 1-10, inclusive, to supervise,
18 investigate, and monitor Defendant DANIEL GONZALEZ and as a direct and proximate result
19 of the above acts and omissions, Plaintiff suffered and incurred, and will suffer and incur in the
20 future, significant educational detriment, humiliation, pain, suffering, fear, serious and permanent
21 emotional harm, psychological harm, mental anguish, the loss of enjoyment and quality of life,
22 loss of future earnings, loss of earning capacity, and medical expenses, and any other general and
23 special damages according to proof.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF TITLE IX, 20 U.S.C. §1681 et seq.**

26 **Against Defendants MDUSD and DOES 1-10**

27 20. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 19 above as
28

1 though set fourth fully herein.

2 21. At all relevant times herein, Defendant MDUSD and the Bridge Program at Loma Vista
3 Adult Center received federal financial assistance within the meaning of 20 U.S.C. §1681(a).

4 22. At all relevant times herein, Plaintiff JANE DOE was a student at the Bridge Program at
5 Loma Vista Adult Center. At all times herein mentioned, JANE DOE had a right not be subject to
6 sexual discrimination, harassment or abuse while she attended the Bridge Program at Loma Vista
7 Adult Center.

8 23. Prior to and during the time that Defendant DANIEL GONZALEZ was sexually abusing
9 JANE DOE during the 2017 school year, Defendant MDUSD and DOES 1-10, inclusive, had
10 actual notice of the prohibitive behavior by Defendant DANIEL GONZALEZ, and that
11 Defendant DANIEL GONZALEZ posed a substantial risk of sexual harassment, abuse and/or
12 assault to students. Officials of Defendant MDUSD including Defendant DOES 1-10, inclusive,
13 had authority to address Defendant DANIEL GONZALEZ inappropriate and prohibitive
14 behavior, and to institute corrective or preventive measures on behalf of MDUSD.

15 24. Despite their knowledge of Defendant DANIEL GONZALEZ' prohibitive and
16 inappropriate behavior, and rumors regarding sexual misconduct and abuse, Defendants
17 MDUSD, and DOES 1-10, inclusive, did nothing to prevent Defendant DANIEL GONZALEZ'
18 behavior, condoned said behavior, and allowed him to isolate students in unsupervised situations,
19 including Plaintiff herein, so that he could undertake said sexual abuse, thereby failing to protect
20 students such as Plaintiff, and Plaintiff specifically, from rape and sexual violence at the Bridge
21 Program at Loma Vista Adult Center. At the very least, any corrective measures taken by
22 Defendants were woefully inadequate as Defendant DANIEL GONZALEZ continued to be
23 allowed to engage in inappropriate and prohibitive conduct without intervention.

24 25. At all relevant times herein, MDUSD and DOES 1-10, inclusive, had exercised
25 substantial control over those harassed, including JANE DOE, and in the context in which the
26 known harassment occurred. This included the school grounds in which multiple events of sexual
27 abuse including rape occurred.

26. The sexual violence described above was so severe, pervasive, and objectively offensive that it deprived Plaintiff access to one or more educational opportunities or benefits.

27. Defendants MDUSD and DOES 1-10, inclusive, exhibited deliberate indifference, acquiescence, and condoned Defendant DANIEL GONZALEZ' prohibitive and inappropriate behavior, and rumors of sexual abuse and misconduct.

28. As a direct, proximate, and legal result of the acts and omissions of Defendants MDUSD and DOES 1-10, inclusive, as alleged herein, Plaintiff suffered and incurred, and will suffer and incur in the future, significant educational detriment, humiliation, pain, suffering, fear, serious and permanent emotional harm, psychological harm, mental anguish, the loss of enjoyment and quality of life, loss of future earnings, loss of earning capacity, and medical expenses, and any other general and special damages according to proof.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as herein set forth.

SECOND CAUSE OF ACTION

NEGLIGENCE

Against Defendants MDUSD and DOES 1-50

29. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28 above as though set fourth fully herein.

30. At all relevant times herein, Defendants MDUSD and DOES 1-10, inclusive, were in the special relationship of school-student with Plaintiff which provided Plaintiff the right of protection from Defendants.

31. At all relevant times herein, Defendants MDUSD and DOES 1-10, inclusive, were in a special relationship with Defendant DANIEL GONZALEZ as a special needs teacher of vulnerable individuals at the Bridge Program at Loma Vista Adult Center which gave Defendants MDUSD and DOES 1-10, inclusive, a right to control Defendant DANIEL GONZALEZ' conduct.

32. At all relevant times herein, Defendants MDUSD, and DOES 1-10, inclusive, had a duty

1 to take all reasonable steps to protect their students' (including Plaintiff's) well-being, safety, and
 2 health, including protection from sexual assaults and abuse. This duty encompassed using
 3 reasonable care in the supervision and control of faculty and teachers, such as Defendant
 4 DANIEL GONZALEZ, as well as general protection of Plaintiff as a member of the student body
 5 with special needs. This duty encompassed the prevention of foreseeable harm from occurring to
 6 Plaintiff such as the harm which occurred on multiple occasions both on and off campus. This
 7 duty encompassed providing a safe education during all times which school is open. This duty is
 8 also reflected, in part and without limitation, by the following:

- 9 a. California Government Code §§ 815.2, 815.6.
- 10 b. California Constitution, Article I, §28(f)(1).
- 11 c. California Education Code §44807.
- 12 d. California Code of Regulations, Title 5, §§5530, 5531, 5550, 5551, and 5552.

13 33. At all relevant times herein, Defendants MDUSD, and DOES 1-10, inclusive, knew or
 14 should have known that Defendant DANIEL GONZALEZ posed a substantial risk of harm to the
 15 health, safety and welfare of students at the Bridge Program at Loma Vista Adult Center.

16 34. At all relevant times herein, Defendants MDUSD, and DOES 1-10, inclusive, knew or
 17 should have known that a failure to properly supervise Defendant DANIEL GONZALEZ while
 18 he was with special needs students would lead to dangerous and harmful conduct including the
 19 sexual abuse of JANE DOE.

20 35. At all relevant times herein, Defendants MDUSD, and DOES 1-10, inclusive, failed to
 21 take reasonable steps to provide for JANE DOE's safety and control Defendant DANIEL
 22 GONZALEZ, failed to train/supervise staff to detect and prevent sexual abuse, and failed to take
 23 any steps to warn staff and/or other authority figures of the consequences of failing to supervise
 24 students and allowing teachers to spend unsupervised time with students, up to and including the
 25 occurrence of sexual abuse.

26 36. Defendants MDUSD and DOES 1-10, inclusive, were negligent and breached their duties
 27 by failing to provide a safe environment for JANE DOE where she would be free from sexual
 28

1 abuse; by failing to monitor and supervise special needs education students on the premises of the
2 Bridge Program at Loma Vista Adult Center and protect them from abuse; by hiring, retaining,
3 and failing to train and supervise Defendant DANIEL GONZALEZ when Defendants knew or
4 should have known he posed a substantial risk of harm to students; in allowing, permitting,
5 approving, and encouraging the prohibited and inappropriate behavior of Defendant DANIEL
6 GONZALEZ when Defendants knew or should have known he posed a substantial risk of harm
7 to students; by failing to maintain, manage, control or operate the Bridge Program at Loma Vista
8 Adult Center premises and staff in such a way as to provide proper supervision of students and
9 staff so as to protect student safety.

10 37. Defendants MDUSD and DOES 1-10, inclusive, were negligent and breached their duties
11 in their hiring, screening, control, supervision, counseling, retention, discipline, and otherwise
12 failing to take adequate precautions and actions with respect to teachers, nurses, aids, counselors,
13 administration and related staff, so as to prevent or deter sexual abuse.

14 38. Defendant MDUSD is liable for the negligence of Defendants DANIEL GONZALEZ and
15 DOES 1-10, inclusive, pursuant to California Government Code §815.2.

16 39. As a direct, proximate, and legal result of the acts and omissions of Defendants MDUSD,
17 and DOES 1-10, inclusive, as alleged herein, Plaintiff was sexually abused and assaulted by
18 Defendant DANIEL GONZALEZ on multiple occasions while she attended the Bridge Program
19 at Loma Vista Adult Center in the fall of 2017.

20 40. The sexual abuse was a foreseeable result of Defendants MDUSD, and DOES 1-10
21 breach of duties to JANE DOE.

22 41. As a direct, proximate, and legal result of the acts and omissions of Defendants MDUSD,
23 and DOES 1-10, inclusive, as alleged herein, Plaintiff suffered and incurred, and will suffer and
24 incur in the future, significant educational detriment, humiliation, pain, suffering, fear, serious
25 and permanent emotional harm, psychological harm, mental anguish, the loss of enjoyment and
26 quality of life, loss of future earnings, loss of earning capacity, and medical expenses, and any
27 other general and special damages according to proof.

1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
2 herein set forth.

3 **THIRD CAUSE OF ACTION**

4 **NEGLIGENCE**

5 **Against Defendant DANIEL GONZALEZ**

6 42. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41 above as
7 though set fourth fully herein.

8 43. Defendant DANIEL GONZALEZ negligently and carelessly failed to control his limbs
9 and body so as to allow his limbs and body to strike Plaintiff's person, directly and indirectly,
10 thereby causing Plaintiff to suffer severe injury as hereinafter alleged.

11 44. As a direct, proximate, and legal result of the acts and omissions of Defendant DANIEL
12 GONZALEZ, inclusive, as alleged herein, Plaintiff suffered and incurred, and will suffer and
13 incur in the future, significant educational detriment, humiliation, pain, suffering, fear, serious
14 and permanent emotional harm, psychological harm, mental anguish, the loss of enjoyment and
15 quality of life, loss of future earnings, loss of earning capacity, and medical expenses, and any
16 other general and special damages according to proof.

17 **FOURTH CAUSE OF ACTION**

18 **SEXUAL BATTERY**

19 **Against Defendant DANIEL GONZALEZ.**

20 45. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28 above as
21 though set fourth fully herein.

22 46. Defendant DANIEL GONZALEZ touched Plaintiff in a sexual manner, with the intent to
23 harm, offend, and/or humiliate Plaintiff.

24 47. Plaintiff did not consent to the harmful and offensive touching.

25 48. Defendant DANIEL GONZALEZ acted maliciously, oppressively, and with a conscious
26 disregard for the rights, safety, and well-being of Plaintiff, such that an award of exemplary and
27 punitive damages should be imposed against this Defendant.

49. As a direct, proximate, and legal result of Defendant DANIEL GONZALEZ' conduct, as alleged herein, Plaintiff suffered and incurred, and will suffer and incur in the future, significant educational detriment, humiliation, pain, suffering, fear, serious and permanent emotional harm, psychological harm, mental anguish, the loss of enjoyment and quality of life, loss of future earnings, loss of earning capacity, and medical expenses, and any other general and special damages according to proof.

FIFTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Against Defendant DANIEL GONZALEZ

49. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28 and Paragraphs 45 through 49 above as though set fourth fully herein.

50. The conduct of Defendant DANIEL GONZALEZ was extreme and outrageous.

51. Defendant DANIEL GONZALEZ intended to cause Plaintiff emotional distress.

52. As a result of Defendant DANIEL GONZALEZ' conduct Plaintiff did in fact incur severe emotional distress.

53. Defendant DANIEL GONZALEZ acted maliciously, oppressively, and with a conscious disregard for the rights, safety, and well-being of Plaintiff, such that an award of exemplary and punitive damages should be imposed against this Defendant.

54. As a direct, proximate, and legal result of DANIEL GONZALEZ' conduct, as alleged herein, Plaintiff suffered and incurred, and will suffer and incur in the future, significant educational detriment, humiliation, pain, suffering, fear, serious and permanent emotional harm, psychological harm, mental anguish, the loss of enjoyment and quality of life, loss of future earnings, loss of earning capacity, and medical expenses, and any other general and special damages according to proof.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- ## SECOND AND THIRD CAUSES OF ACTION

- ## FOURTH AND FIFTH CAUSES OF ACTION

- DATED: May 1, 2018

BENNETT & JOHNSON, LLP

By: /s/
WILLIAM C. JOHNSON
Attorneys for the Plaintiff